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1/17/01

Hearing:
October 4, 2000

Paper No. 23
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sector, Inc.

Serial No. 75/213,947

Joseph D. Garon and Steven R. Gustavson of Baker Botts
L.L.P. for Sector, Inc.

Karla Perkins, Trademark Examining Attorney, Law Office 106
(Mary I. Sparrow, Managing Attorney).

Before Hairston, Walters and Wendel, Administrative
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Sector, Inc. has appealed from the Trademark Examining
Attorney's final refusal to register the mark SECTOR for
the following services:

personnel management services, namely providing
outsourcing clerical personnel and computer
operating personnel for others in Class 35; and

providing printing and microfilming services
for others; computer consultation services;
providing computer space and computer back-up
services for others for disaster contingencies;
monitoring the electronic operation and telephone

communications systems of others in Class 42.¹

Registration has been refused under Section 2(d) of the Trademark Act as to the services in Class 35 vis-à-vis the mark SECTOR GROUP for "business management consulting services" (Registration No. 1,878,835 issued February 14, 1995), and as to the services in Class 42 vis-à-vis the mark SECTOR for "maintenance and repair of computer hardware" (Registration No. 1,425,950 issued January 20, 1987; combined Section 8 & 15 affidavit filed).

Applicant has appealed. Briefs have been filed,² and an oral hearing was held before the Board.

¹ Serial No. 75/213,947 filed December 16, 1996, which sets forth dates of first use of September 17, 1996 as to the services in both classes.

² The Examining Attorney, for the first time in her brief, objects to the results of a search of a private company's database of marks comprising SECTOR which was submitted by applicant during the prosecution of the application. While the submission of a list of registrations from a database is not the proper way to make such material of record, in this case, the Examining Attorney is considered to have waived her objection because she failed to so advise applicant in a timely manner. In any event, we note that applicant, in its brief on the case, acknowledges that the marks in these registrations do not cover services which are related to those involved herein, and thus, do not serve to establish that the term SECTOR is highly suggestive for such services.

At the outset, we note that applicant, in its brief on the case, states that:

Applicant recognizes that the cited marks are identical, and similar, respectively, and that therefore the "similarity of the marks" factor favors the Examiner's assessment.
(Brief, p. 2)

We focus our attention then, as have applicant and the Examining Attorney, on the respective services.

Registration No. 1,878,835

The Examining Attorney maintains that applicant's personnel management services, namely, providing outsourcing clerical personnel and computer operating personnel for others and the registrant's business consulting services are related. In support of her contention, the Examining Attorney made of record ten use-based third-party registrations which cover personnel management consultation services, on the one hand, and business management consultation services, on the other hand. However, applicant's services are not personnel management consultation services which entail providing advice on personnel management. Rather, applicant's personnel management services entail providing outsourcing clerical personnel and computer operating personnel for others. It seems to us that there are significant differences between providing advice on personnel

management and providing actual personnel to perform work. Moreover, while many businesses may avail themselves of both kinds of services, there is nothing in this record to indicate that within such businesses, the persons in charge of personnel management are also responsible for purchasing outsourcing services. In short, we cannot presume that the purchasers of personnel management consulting services and personnel outsourcing services are the same. See e.g., *Electronic Design & Sales Inc. v. Electronic Data Systems Corp.*, 954 F.2d 713, 21 USPQ2d 1388 (Fed. Cir. 1992).

Registration No. 1,425,950

The Examining Attorney maintains that applicant's computer consulting services, in particular, are related to the maintenance and repair of computer hardware services identified in the cited registration. In support of her contention, the Examining Attorney introduced ten used-based third-party registrations which cover maintenance and repair of computer hardware, on the one hand, and computer consulting services, on the other hand. In this case, applicant's computer consulting services, which as read in the context of the recitation of services, are simply part of applicant's various outsourcing services, e.g., printing, microfilming, and computer back-up. This seems to us to be quite different from

maintenance and repair of computer hardware and any consultation services offered in conjunction therewith. Thus, we are not persuaded on the basis of the third-party registrations that there is any relationship between applicant's particular computer consulting services and the maintenance and repair of computer hardware.

In sum, notwithstanding the identity/similarities in applicant's mark SECTOR and the cited marks SECTOR and SECTOR GROUP, we find that there is no likelihood of confusion because of the differences in the respective services.

Decision: The refusal to register is reversed as to each of the cited registrations.